

Notice of Allowability

Application No.

10/820,127

Examiner

Julian W. Woo

Applicant(s)

LAUFER ET AL.

Art Unit

3773

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the appeal brief of 4/14/10 and IDS of 6/30/10.
2. ☒ The allowed claim(s) is/are 1-21 and 24-53.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 6/30/10, 6/30/10, 4/08/04 (revised)
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20100629.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Giordana M. Belenchia-Sauer, Reg. No. 63,680; on June 29, 2010.

2. The application has been amended as follows:

In the specification, page 1, in the paragraph under "Cross Reference to Related Applications," and after "September 5, 2000," insert --now issued as U.S. Patent No. 6,773,441, --. Also delete "60/142,492," and in its place, insert --60/140,492--.

In claim 1, line 3, delete "sufficient," and in its place, insert --adjustable--.

In claim 5, line 4, delete "sufficient," and in its place, insert --adjustable--.

In claim 34, line 1, after "member," insert --having an adjustable length and being--.

In claim 53, line 1, after "comprising: ," insert --an elongated member defining a central longitudinal axis and having an adjustable length; --. In line 4, delete "on a," and in its place, insert --on the--.

3. The following is an examiner's statement of reasons for allowance: With respect to claims 1-4 and 45-52: None of the prior art of record, alone or in combination, discloses a tissue shaping instrument including, inter alia, an elongated member with a distal effector portion and first and second tissue engaging devices disposed on the distal end effector portion, where the second tissue engaging device comprises opposed articable arms and tissue piercing element disposed on at least one arm, where the second tissue engaging device is movable relative to the first tissue engaging device and hingedly pivotable relative to the long-axis of the elongated member, and where the elongated member has an adjustable length.

With respect to claims 5-21: None of the prior art of record, alone or in combination, discloses a tissue shaping instrument including, inter alia, an elongated member having inner and outer tubular members and first and second tissue engaging devices each disposed on an inner or outer tubular member, where the second tissue engaging device comprises opposed articable arms and tissue piercing element disposed on at least one arm, where the elongated member has an adjustable length.

With respect to claims 24-33: None of the prior art of record, alone or in combination, discloses an apparatus including, inter alia, a means for transorally engaging a plurality of regions of stomach tissue with a plurality of members from within the stomach and a means for pulling tissue located between the plurality of regions of tissue prior to engagement of the plurality of regions of tissue by first and second members, where the first and second members are positioned on the same central longitudinal axis, and where the abovementioned means includes an actuating

mechanism for facilitating simultaneous independent movement of the members to draw together stomach tissue sections.

With respect to claims 34-44: None of the prior art of record, alone or in combination, discloses an apparatus including a substantially rigid elongated member and first and second movable members configured to move toward one another, where the first and second movable members are positioned on a central longitudinal axis, where at least one of the members has a means for deploying an implant, and where the elongated member has an adjustable length.

With respect to claim 53: None of the prior art of record, alone or in combination, discloses an apparatus including, inter alia, an elongated member defining a central longitudinal axis, a plurality of tissue engaging members including first and second members positioned on the central longitudinal axis, and an actuating mechanism for facilitating simultaneous independent movement of the members, where the elongated member has an adjustable length.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is 571-272-4707. The examiner can normally be reached on M-TH:6:30-4:00; alt. Fri.: 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tan-Uyen (Jackie) Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Julian W. Woo/
Primary Examiner, Art Unit 3773